

REMARKS

Amendments

The present amendment is submitted in an earnest effort to advance the case to issue without delay.

Claims 1 and 17 have been amended without prejudice to recite preferred embodiments of applicants invention that are more clearly differentiated from the prior art. Support is provided on page 5, lines 5-6; page 7, lines 9-12 and page 32 lines 1-5.

Claims Rejection 35 USC §103

Claims 1-4, 7-9, 15, 16, 19 and 20 were rejected under 35 USC 103(a) as being unpatentable over WO 00/02532. Applicants' traverse this rejection.

WO '532 teaches a personal cleaning composition containing an anionic and/or amphoteric surfactant, and a polymeric ester. The key differences between '532 and the current invention are:

- WO '532 does not recite with any specificity the combination of an alkyl ethoxysulfate, a betaine and a hydroxysultaine having the two limitations recited in claims 1 and 17: ratios of betaine to hydroxysultaine, and the ratio of alkyl ethoxy sulfate to betaine plus hydroxysultainesultaine.
- WO '532 does not disclose the upper limit on the alkyl ethoxy sulfate component of about 8% as recited in claim 1 and 17.

- WO '532 does not restrict compositions to those that are not potential eye irritants based on the objective criteria recited in claims 1 and 17.
- WO '532 does not disclose the limitation of about 2% on the additional harsh surfactants recited in claims 1 and 17.

Absent disclosure of these four key elements recited in applicants' claims (specific limitations on absolute and relative proportions of recited surfactants, non-irritant to eyes and maximum levels of specific additional surfactants) WO 00/02532 does not present a *prima facie* case of obviousness.

WO '532 in fact teaches away from applicants' claimed invention. Examples 10-13 teach compositions containing 15% ammonium laureth sulfate, while examples 10, 12 and 13 teach compositions containing 5% ammonium lauryl sulfate. These levels are far above the corresponding maximum levels recited in applicant's claims.

Claims 1-4, 6-10 and 15, 16, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Patel et al (US 6,165,454). Applicants traverse this rejection.

Patel et al teaches a method for making hair care products that does not require added heat (abstract). The key differences between Patel et al and the current invention are:

- Patel et al does not recite with any specificity the combination of an alkyl ethoxysulfate, a betaine and a hydroxysultaine having the two limitations recited in claims 1 and 17, i.e., ratios of betaine to hydroxysultaine, and ratio of alkyl ethoxy sulfate to betaine plus hydroxysultaine.

- Patel et al does not disclose the maximum level of alkyl ethoxy sulfate in the composition of about 8% as recited in claim 1 and 17.
- Patel et al does not restrict compositions to those that are not potential eye irritants based on the objective criteria recited in claims 1 and 17.
- Patel et al does not disclose the limitation of 2% on the additional harsh surfactants recited in claims 1 and 17.

Absent disclosure of the above elements of applicants claims (specific limitations on absolute and relative proportions of the recited surfactants, non-irritant to eyes and maximum levels of specific additional surfactants) Patel et al (US 6,165,454) does not present a *prima facie* case of obviousness.

Patel et al in fact teaches away from applicants' claimed invention. All the 48 examples disclosed in Patel et al teaches compositions that contain either 12% alkyl ethoxy sulfate or 6% alkyl sulfate which are 1.5 to 3 times greater than the maximum levels of these ingredients recited in applicants claims (about 8% and about 2% respectively). As shown in previous declarations, the Patel et al compositions are potential eye irritants when tested by applicants' disclosed methods as would be expected from their compositions relative to applicants'.

Claims 1-4, 6-9, 11, 12, 15, 16, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Alvarado et al (US 2003/0022799). Applicants traverse this rejection.

Alvarado et al teaches a foamable shampoo composition which comprises an alkyl ether sulfate, a sorbital derivative, a betaine, an alkylamido alkylamine, an

alkoxylated carboxylic acid and an organic salt. The key differences between Alvarado et al and the current invention are:

- Alvarado et al does not recite with any specificity the combination of an alkyl ethoxyysulfate, a betaine and a hydroxysultaine having the limitations recited in claims 1 and 17, i.e., ratios of betaine to alkyl ethoxylate, and of alkyl ethoxy sulfate to betaine plus sultaine.
- Alvarado et al does not require that the degree of ethoxylation of the alkyl ethoxy sulfate be at least 3 (see claim 1 of Alvarado et al)
- Alvarado et al does not place a maximum level of alkyl ethoxy sulfate in the composition of about 8% as recited in claim 1 and 17.
- Alvarado et al does not disclose an upper limit of about 2% on additional harsh surfactants recited in claim 1 and 17.

Absent disclosure of the above elements of applicants claims (recited limitations on absolute and relative proportions of recited surfactants, types of alkyl ether sulfate, and maximum levels of specific additional surfactants) Alvarado et al (US 2003/0022799) does not present a *prima facie* case of obviousness.

Alvarado et al in fact teaches away from applicants' claimed invention. Claim 1 of Alvarado et al discloses that the lower limit of an alkyl ethoxy sulfate is about 10% which is about 25% higher than the upper level recited in applicants' claims. All the examples of Alvarado et al teach compositions wherein the absolute level of alkyl ethoxy sulfate is much greater than the upper level of about 8% recited in claims 1 and 17. Furthermore, in these examples, the ratio of alkyl ethoxy sulfate to betaine+ hydroxysultaine is outside the range recited in claims 1 and 17.

Claims 1-4, 6-10, 15, 16, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Baravetto et al (US 6,174,522). Applicants traverse this rejection.

Baravetto et al teaches an aqueous conditioning shampoo composition containing a surfactant with a non-volatile conditioning agent having a dual particle size (abstract). The key differences between Baravetto et al and the current invention are:

- Baravetto et al does not recite with any specificity the combination of an alkyl ethoxysulfate, a betaine and a hydroxysultaine having the two limitations recited in claims 1 and 17, i.e., ratios of betaine to hydroxysultaine, and ratio of alkyl ethoxy sulfate to betaine plus hydroxysultaine.
- Baravetto et al does not the upper limit of about 8% on the alkyl ethoxy sulfate component as recited in applicants' claims 1 and 17.
- Baravetto et al does not restrict compositions to those that are not potential eye irritants based on the objective tests recited in claims 1 and 17.
- Baravetto et al does not disclose the limitation of about 2% on the additional harsh surfactants recited in claims 1 and 17.

Absent disclosure of the above elements of applicants claims (specific limitations on absolute and relative proportions of the surfactants, non-irritant to eyes and maximum levels of specific additional surfactants) Baravetto et al (US 6,174,522) does not present a *prima facie* case of obviousness.

Baravetto et al in fact teaches away from applicants' claimed invention. All 15 examples of Baravetto et al disclose compositions in which the alkyl ethoxy sulfate component is well above the 8% level recited in applicants' claims 1 and 17.

Furthermore, 5 of the 15 examples teach composition containing an alkyl sulfate at levels well above applicants' limitation of about 2%. As shown in previous declarations, the Baravetto et al compositions are potential eye irritants when tested by applicants' disclosed methods as would be expected from their compositions relative to applicants'.

Claims 1-10, 15, 16, 19 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Fairley et al (US 2002/0192180) and WO 99/53889. Applicants traverse this rejection.

Fairley et al teaches an aqueous shampoo composition comprising a cleansing surfactant and a dispersed non-volatile, water insoluble oily conditioning agent and a cationic polymer (abstract). The key differences between Fairley et al and the current invention are:

- Fairley et al does not recite with any specificity, the combination of an alkyl ethoxysulfate, a betaine and a hydroxysultaine having the two limitations recited in claims 1 and 17, i.e., ratios of betaine to hydroxysultaine, and ratio of alkyl ethoxy sulfate to betaine plus hydroxysultaine.
- Fairley et al does not disclose the upper limit of about 8% on the alkyl ethoxy sulfate component as recited in applicants' claims 1 and 17.
- Fairley et al does not restrict compositions to those that do not irritate eyes based on the objective criteria recited in applicants' claims 1 and 17.
- Fairley et al does not disclose the limitation of about 2% on the additional harsh surfactants recited in applicants' claims 1 and 17.

Absent disclosure of the above elements of applicants claims (specific limitations on absolute and relative proportions of the surfactants, non-irritant to eyes and

maximum levels of specific additional surfactants) Fairley et al (US 6,174,522) does not present a *prima facie* case of obviousness.

Fairley et al in fact teaches away from applicants' claimed invention. The single example recited by Fairley et al teaches a composition containing an alkyl ethoxy sulfate having 2EO groups at a level of 14% and an alkyl ethoxysulfate to betaine ratio of 7 (no hydroxysultaine is present) all of which are outside the ranges recited in applicants' claims. As shown in previous declarations, the Fairley et al composition is a potential eye irritant when tested by applicants' disclosed methods as would be expected from its composition relative to applicants.

WO '889 teaches an aqueous shampoo composition comprising at least one cleansing surfactant, a cationic deposition polymer and an emulsified silicone of specified particle size (abstract).

WO '889 does not remedy the shortcomings discussed above of Fairley et al as a prior art reference. In fact, like Fairley et al, WO '889 teaches away from applicants' invention. The only example in WO '889 teaches a composition containing an alkyl ethoxy sulfate having 2EO groups at a ratio to betaine of 2 (no hydroxysultaine is present): both parameters being outside the ranges recited in applicants' claims.

Claims 11-13 and 17 were rejected under 35 USC § 103(a) as being unpatentable over Patel et al (US 6,165,454), Fairley et al (US 2002/0192180), WO 99/53889, WO 00/02532 or Baravetto et al (US 6,174,522) in view of Booker et al (US 2003/011423). Applicants traverse this rejection.

Brooker et al teaches a moisturizing composition that is mild to skin and eyes that includes a cationic polymer, a monoester emollient, a di-and/or tri-ester emollient and a surfactant.

Brooker et al does not remedy the shortcomings discussed above of Patel et al, Fairley et al, WO '889, WO '532 or Baravetto et al as prior art references. In fact Brooker et al like the other references cited, teaches away from applicant's invention. All the examples of Brooker et al teach a betaine level 8-12% that is greater than the upper limit of about 7% recited in applicants' claims. Furthermore, Example 2 teaches a composition containing an alkyl ethoxy sulfate having 2EO groups present at a level of 10% which is also outside applicants' claims.

Claims 5 and 6 were rejected under 35 USC § 103(a) as being unpatentable over WO 00/02532 in view of Fairley et al (US 20023/0192180). Applicants traverse this rejection.


Both of these references have been discussed above. Neither reference presents a *prime facie* case of obviousness, Fairley et al does not remedy the shortcomings of WO 00/02532, as a prior art reference and both references teach away from applicants claimed invention.

In summary as discussed above neither WO 00/02532, Patel et al (US 6,165,454), Fairley et al (US 20023/0192180), WO 99/53889, Baravetto et al (US 6,174,522) or Booker et al (US 2003/011423), alone or in combination presents a *prima*

facie case of obviousness of applicants amended claims and all of the references teach away from multiple elements recited in applicants claims. In light of the above amendments and remarks, applicants respectfully request that the 103(a) rejection over this art be reconsidered and withdrawn and that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael P. Aronson". The signature is written in dark ink and is positioned above a horizontal line.

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